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**In the Supreme Court**

OF THE

**United States**

OCTOBER TERM, 1925

**No. 224**

WILLIAM O'HARA and SVEN TJERSLAND,  
*Petitioners,*

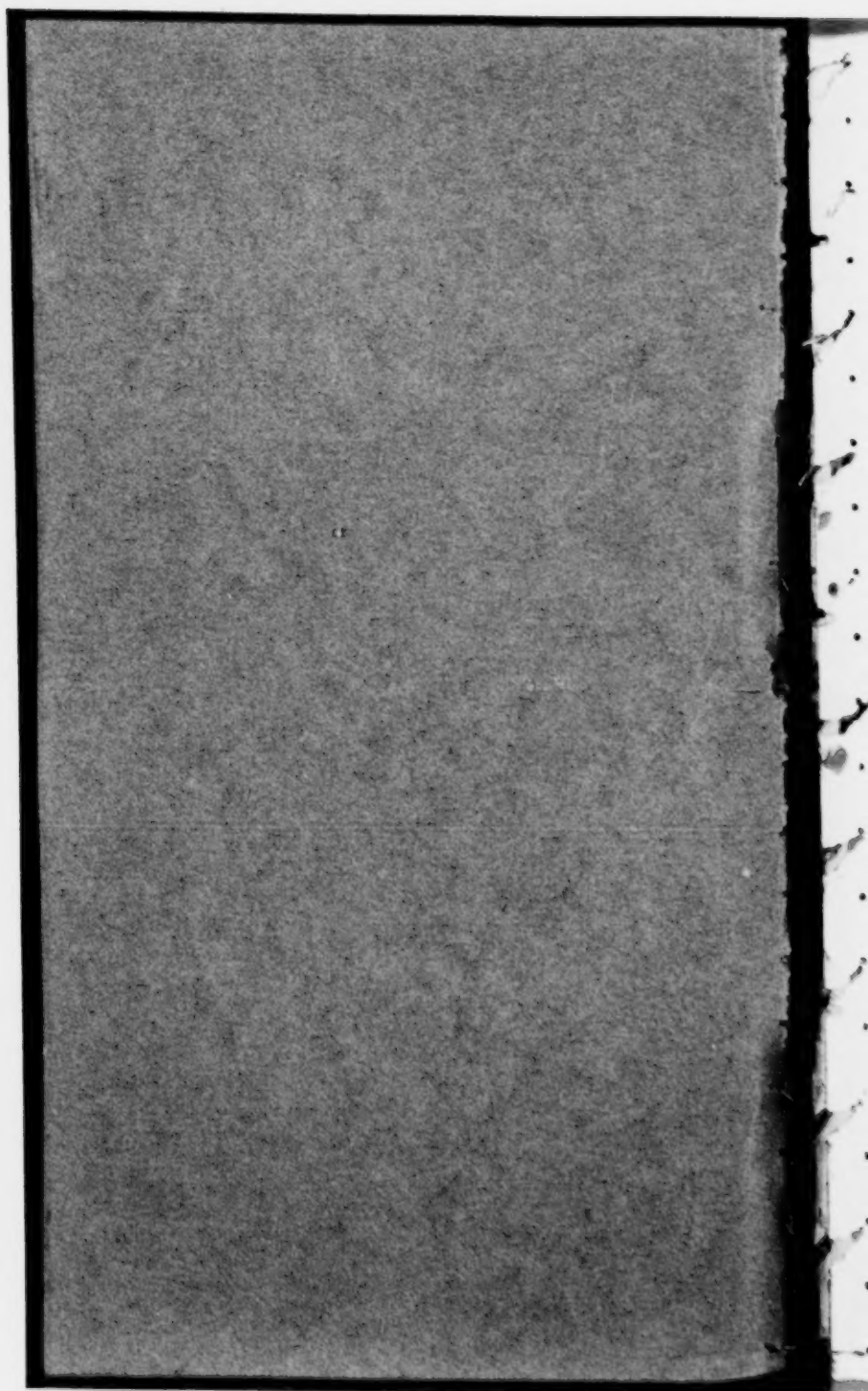
vs.

LUCKENBACH STEAMSHIP COMPANY, INC.  
(a corporation),  
*Respondent.*

**BRIEF FOR RESPONDENT.**

Peter S. Carter,

LOUIS T. HENGSTLER,  
FREDERICK W. DORR,  
Kohl Building, San Francisco,  
*Proctors for Respondent.*



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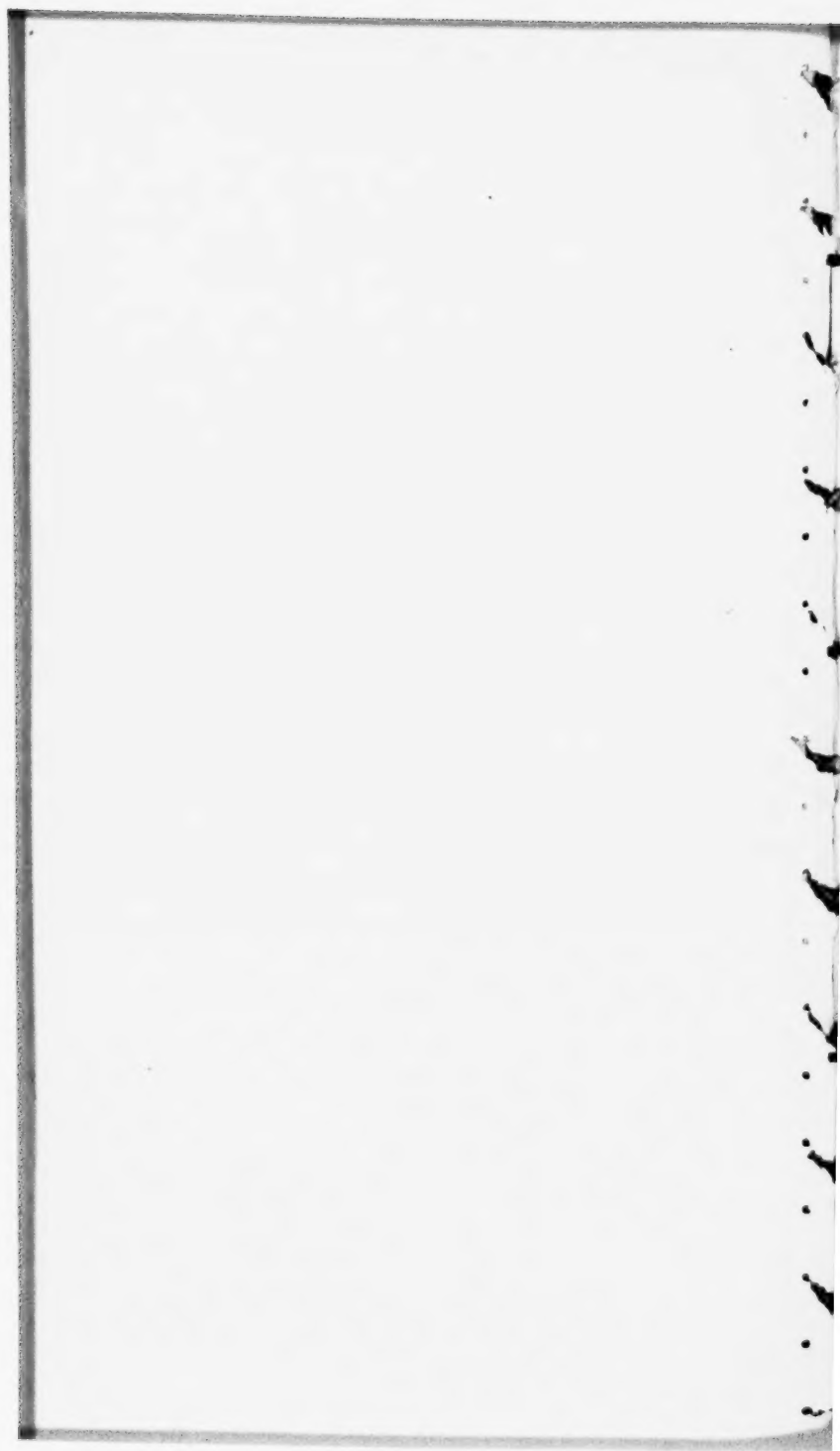
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## BRIEF FOR RESPONDENT.

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### INTRODUCTORY STATEMENT.

The questions involved in this appeal arise out of the construction of Section 2 of the Act of Congress, March 4, 1915, ch. 153 (38 Stat. 1164), popularly known as the La Follette Seamen's Act.

The petitioners were quartermasters employed on the steamship "Lewis Luckenbach", owned and oper-

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(Note: The opinion of the Circuit Court of Appeals may be found in 1 Fed. Rep. (2nd Series) 923, and at page 61 of the printed record. The opinion of the District Court may be found in 1924 American Maritime Cases at page 199, and at page 44 of the printed record.)

ated by respondent, for a voyage from New York to Pacific Coast ports, *and return* to the Atlantic, at a wage of \$45 per month. Upon reaching San Francisco, the petitioners demanded that they be paid off, without any reason or excuse whatever.\* (Record, p. 34.) When this was refused, they demanded a certificate to the U. S. Marine Hospital, which was given to them. (Record, p. 34.) Not being successful at obtaining their discharge on the ground of disability, they next claimed that the ship was violating the law in regard to dividing the crew into watches, and that they were entitled to discharge upon that ground. (Record, p. 35.)

It appears from the undisputed testimony, including that given by one of the petitioners, that there were three quartermasters on the ship, and that they were divided into three watches. (Record, p. 21.) Therefore, the complaint of the petitioners is not based upon an alleged failure to divide the petitioners, who were *quartermasters*, into watches, or upon a claim that *they* were required to work unlawful hours, but upon the claim that *other* members of the deck force were not divided equally into watches. This is quite clear from the statement in petitioners' brief, as follows:

"There were 10 sailors and 3 quartermasters and the 10 sailors were divided up as follows:

*Three stood watch with the quartermasters, four hours on and eight hours off."*

(Petitioners' Brief, p. 2.)

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\* References are to the printed transcript of record.

The petitioners did not claim that they personally were on duty more than one watch out of every three, or that they were required to work more than eight hours out of every twenty-four. The basis for their libel is that *other* members of the crew, who were not standing a regular wheel or lookout watch, were on duty for eight hours at a stretch during the daytime and off duty during the night.

No complaint was made by the other men, who were not engaged in the sailing or management of the vessel, but who were employed in painting and other ship's work during the day, and were allowed to sleep at night. But, because those *other* men were not divided into equal watches, and required to do painting and ship's work at night, the quartermasters claimed the right to be discharged. The duty of a quartermaster is to steer the ship, and obviously only one man at a time can be engaged in that duty. The addition of more men to a night watch would not affect the duties of the quartermasters at all.

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**THE PURPOSE OF THE STATUTE IS TO PREVENT  
OVERWORK.**

It is the contention of the petitioners that Section 2 of the Act of March 4, 1915, requires that the crew of a vessel must be divided into watches with an equal number of men on each watch, *irrespective of the duties required to be performed.*

It is our contention that the provisions of the act were intended to regulate the hours of work, at sea

and in port, and do not require any specified number of men on any one watch.

The act reads as follows:

"Sec. 2. (Watches—duties—holidays—hours of labor—vessels not affected.) That in all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays, or sounds exclusively, *the sailors shall, while at sea, be divided into at least two*, and the firemen, oilers, and water tenders into at least three *watches*, which shall be kept on duty successively for the performance of ordinary work incident to the *sailing and management* of the vessel. The seamen shall not be shipped to work alternately in the fireroom and on-deck, nor shall those shipped for deck duty be required to work in the fireroom, or vice versa; but these provisions shall not limit either the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, the whole or any part of the crew are needed for the *maneuvering* of the vessel or the performance of work necessary for the safety of the vessel or her cargo, or for the saving of life aboard other vessels in jeopardy, or when in port or at sea from requiring the whole or any part of the crew to participate in the performance of fire, lifeboat, and other drills. While such vessel is in a safe harbor no seaman shall be required to do any unnecessary work on Sundays or the following-named days: New Year's Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, but this shall not prevent the dispatch of a vessel on regular schedule or when ready to proceed on her voyage. *And at all times while such vessel is in a safe harbor, nine hours, inclusive of the anchor watch, shall constitute a day's work.* Whenever the master of any vessel shall fail to comply with this section, *the seamen shall be entitled to discharge from such vessel and to receive the wages earned.* But this section

shall not apply to fishing or whaling vessels, or yachts. (38 Stat. L. 1164.)”

(9 Fed. St. Ann. (2nd Ed.), p. 212.)

It will be noted that while the provisions of the statute only require that “the sailors shall, while at sea, be divided into at least *two* \* \* \* watches”, the petitioners in this case, together with a third quarter-master, were divided into *three* watches, which were kept on duty successively. They were not in a position to complain that they were overworked, because, according to their own testimony, they were only required to stand a watch in *three*, instead of a watch in *two*, the maximum permitted by the statute. (Record, p. 24.)

The statute does not permit the petitioners to claim their discharge, because some *other* members of the crew, doing other work, might not have been divided into watches. The wording of the statute on this point is as follows:

“Whenever the master of any vessel shall fail to comply with this section, the *seamen* shall be entitled to discharge from such vessel and to receive the wages earned.”

(9 Fed. St. Ann. (2nd Ed.), p. 212.)

The plain meaning of this provision is that the *seamen*, the specific men, who were overworked and who were required to stand more than the number of watches provided by law; or who were required to work more than nine hours in port, might claim their discharge on that ground. There is no provision in the statute which permits the whole crew to quit, be-

cause one man is overworked, or which permits one man to quit because another man is overworked. The petitioners' claim, therefore, has no foundation, because they admit that they, together with another quartermaster, stood watch successively four hours on and eight hours off, a more liberal watch than required by law.

The men who are required to be kept on duty successively, according to the plain meaning of the statute, are those men who are doing work "incident to the *sailing and management* of the vessel". The petitioners, as quartermasters, were doing work incident to the sailing and management of the ship, and were kept on duty in successive watches. Similarly, the lookouts who were also doing work incidental to the sailing and management of the vessel, were kept on duty in successive watches.

But the other seamen, about whom the complaint was made, were engaged in painting and cleaning about the decks, and were not engaged in the sailing and management of the ship. It made no difference at all in the navigation of the vessel, whether such work was performed in the daytime or at night.

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**THE PETITIONERS' CONTENTION IS UNREASONABLE.**

The contention of the petitioners, if sustained, would require a number of men to be on watch at night, with no duties to perform. In a modern steamship there are no sails to trim, and there is no work to be done on deck at night, except to steer and keep

a lookout. This work is accomplished by assigning two men to a watch, and having them alternate between the wheel and lookout in two hour shifts. If any additional men were assigned to the same watch, they would have nothing to do. There are two stations to be filled, and any number of men in excess of two would be superfluous. If such were required, the vessel would have men technically on watch for four hours who would have nothing to do except to pick out a warm place to sleep, and at the end of four hours the same men would go off watch for eight hours more with no work to perform.

While we have no doubt that the seamen would like to see such a condition of affairs, we do not apprehend that the court, in the absence of any expressed intent by Congress, would impose such a drastic burden upon the American shipowner.

Counsel argues at length, quoting from "Extension of Remarks" of Hon. John E. Raker, in an attempt to show that the purpose of the act was to require an equal division of watches and a rotation of duties, in order to lessen the danger of accidents, etc. If, instead of the practice now in vogue by which certain men are picked for duty at the wheel and lookout on account of their aptitude and qualifications, there should be substituted a policy of arbitrarily rotating the men through the different duties irrespective of their qualifications, the result would be a decrease in safe navigation, and an increase in accidents.

A study of the debates in Congress, while this bill was pending, lends support to our contention that the

act was passed for the purpose of regulating the *hours of work*, and to prevent men from being over-worked.

In an explanatory article by the legislative committee of the Seamen's Union, it was stated:

"\* \* \* The features of the bill are, briefly stated, as follows:

1. Establishing 'watch and watch' at sea and prohibiting unnecessary work on Sundays and holidays in port, thus insuring *the amount of rest* necessary to the highest state of efficiency. \* \* \*

Andrew Furuseth,

Wm. H. Frazier,

Walter MacArthur,

Legislative Committee."

(Cong. Rec., Part 12, appen. 735—62nd Cong.  
—2nd Session.)

In speaking in the House of Representatives in favor of this provision of the bill, Mr. Post stated:

"If we can \* \* \* establish 'watch' for watch' so as to furnish requisite rest, etc."

-(Cong. Rec., Vol. 48, Part 9—p. 9433.)

These proceedings indicate, exactly as we have contended, and as held by the District Court and the Circuit Court of Appeals, that the purpose of Section 2 of the act was to prevent overwork.

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#### **PETITIONERS' CLAIMS ARE MERE PRETEXTS.**

Since the amendment of the Seamen's Act in 1915, abolishing arrest for desertion, there is no remedy left to the shipowner except to declare a forfeiture

of wages. As a result, under the wage conditions which prevailed at the time of the voyage involved in this action, the crews of vessels arriving on the Pacific Coast used every possible excuse to obtain their discharge under some pretext or other which would not involve a forfeiture of their wages. The master testified as follows:

“Q. Did you have any trouble in holding your crew?

A. I never could hold them. They always, more or less of them, every trip, all the time, as soon as we got out here, wanted to be paid off. They came out as passengers, to get their passage out. If they could not get paid off,—if they could not get a certificate from a doctor of being incapacitated for duty, they drew half of the money they had coming to them and would quit,—leave. They had been doing that right along.

Q. I understand. And when these men demanded that they be paid off, claiming you had violated the law, they had previously demanded that they be paid off, without any excuse whatsoever?

A. Yes, sir; they asked to be paid off first thing of all; and I told them I would not pay them off. I am not positive whether both of them, but I am positive one of them wanted a certificate for the doctor,—wanted to see a doctor; and I think both of them did.”

(Record, pp. 34, 35.)

The record shows beyond any doubt that the claim by petitioners that they should be discharged because some other members of the crew, not engaged in the sailing or management of the ship, were not divided equally into watches, was a mere pretext, adopted

after the petitioners had tried, without success to obtain their discharge upon other grounds. Both the District Court and the Circuit Court of Appeals so found. (Record, pp. 44, 62.)

There was an attempt to show that the ship was operated part of the time at night without a lookout. The testimony on this point is very, very weak, and is contradicted by the master of the vessel. (Record, pp. 38, 39, 40.) It is not material, in any event, for the statute relied upon by the petitioners does not contain any provision for the posting of a lookout.

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#### **NO DECISIONS ON THE POINT.**

We have been unable to find any decisions on the point involved in this case. The contention is so strained and unwarranted that it is not strange that it should not have arisen before. The statute is clear and there is no basis for the construction urged by the petitioners. To quote from the opinion of the District Court:

“The libellants contend that under this section there must be an equal division of the crew into the different watches. That is, if the sailors are divided into two watches, one-half must be assigned to each watch; if into three watches, one-third to each watch, and so forth, as nearly as may be. If this is the proper construction of the act it is conceded that the master failed to comply therewith. But in our opinion the primary object of the section was to fix the hours of service and to prevent overwork, not to prescribe the number of seamen on each watch. If one-half or one-third of the crew must be assigned to duty at

night, it is quite apparent that a majority of those thus assigned will have little or nothing to do. Of course, if such is the requirement of the law, the courts have nothing to say, but we fail to find anything in the statute calling for that construction. If Congress intended to thus limit the discretion of the master in the management of the vessel and the disposition of the crew it would have employed direct and specific language to that end. The libelants were, therefore, not entitled to their discharge, and the libel is dismissed."

(Record, pp. 44, 45.)

The Circuit Court of Appeals, in affirming the District Court, stated:

"Libelants, who were quartermasters, do not claim that they were on duty more than one watch out of every three, or that they were required to work more than eight hours out of every twenty-four. The complaint of these two quartermasters, the libelants herein, is not that they have suffered any unequal treatment in the labor required of them, or that they were not on duty successively, but that other members of the crew did not stand the regular wheel or lookout watch; that they were on duty only eight hours during the daytime and off during the night. No complaint is made of unequal treatment by the other men who were not engaged in the actual sailing or management of the vessel, but were employed in painting and other ordinary ship-work during the day and were allowed off duty during the night. The complaint is that because these other men engaged in ordinary service were not divided into equal watches and required to do duty in watches at night, the two quartermasters claim they had the right to be discharged.

"The Court below held that the primary object of the statute was to fix the hours of service

and to prevent overwork, not to prescribe the number of seamen on each watch, and that the libelants were, therefore, not entitled to their discharge.

"The duty of the quartermaster is to steer the ship, and obviously only one man at a time can be engaged in that duty. The addition of more men to a night watch would not relieve the quartermasters of their duties. They are selected for their qualification to steer the ship, and the safety of the ship often depends upon their qualification to perform that duty. The purpose of Congress was obviously to provide for the safety of the ship in the selection of qualified quartermasters and men for the lookout, and also to prevent overwork. The division of the men into watches as disclosed by the evidence in this case was not contrary to the statute.

"The decree of the District Court is affirmed."  
(Record, pp. 63-5, inc.)

It is submitted that the decrees of the District Court and Circuit Court of Appeals should be affirmed.

Dated, San Francisco,  
October 5, 1925.

Respectfully submitted,

Peter S. Carter,

LOUIS T. HENGSTLER,

FREDERICK W. DORR,

*Proctors for Respondent.*

